



March 28, 2002

Ms. Deanie Bostick-Martin  
Records System Supervisor  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2002-1539

Dear Ms. Bostick-Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160517.

The City of Lubbock (the "city") received a request for six categories of information regarding any documentation on a specified address and specific people. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all police reports regarding two named individuals. In this case, we believe that those individuals' right to privacy has been implicated. Thus, to the extent the named individuals are possible suspects, we conclude that the city must withhold those case reports under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.*

Section 552.101 also encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The case report number 99-036636 involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, case report number 99-036636 is confidential pursuant to section 58.007(c) of the Family Code. The city must withhold this information from disclosure under section 552.101 of the Government Code.

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that case numbers 00-036700, 00-016625, 00-006815, and 00-037418 relate to pending criminal investigations and prosecutions. Based upon these representations, we conclude that the release of case numbers 00-036700, 00-016625, 00-006815, and 00-037418 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic offense and arrest information, the city may withhold case numbers 00-036700, 00-016625, 00-006815, and 00-037418 from disclosure based on section 552.108(a)(1). We note that the city has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

You state that the remaining submitted case reports may relate to pending criminal investigations or prosecutions but the city has not yet determined as such at this time. You have not provided this office with enough information to determine how and why the release of the remaining submitted reports would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Thus, we cannot conclude that the release of case numbers 00-048803, 00-016706, 00-014948, 01-013255, 01-053434, 01-053738, 01-052770, 02-000299, 00-013895, 99-034296, 99-027646, 01-044503, and 01-009105 would interfere with the detection, investigation, or prosecution of crime pursuant to section 552.108 of the Government Code. The city must release this information.

Furthermore, the city has failed to submit case number 00-054362. Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because you have not submitted the information, we have no basis for finding it excepted from disclosure. Thus, we have no choice but to order case number 00-054362 released per section 552.302. If you believe the information is excepted from disclosure, you must challenge the ruling in court as outlined below. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

We note that a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 (1994). It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that

authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, the city should ensure that these numbers were not obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Furthermore, section 552.136 of the Government Code makes certain account number information confidential and provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Accordingly, the city must withhold the account numbers we have marked under section 552.136 of the Government Code.

We also note that Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, the city must withhold the Texas driver's license numbers, license plate numbers, and vehicle identification numbers pursuant to section 552.130.

In summary, we conclude that where the individuals named in the request for information are possible suspects, the city must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. Furthermore, the city must withhold case report number 99-036636 pursuant to section 58.007(c) of the Family Code. Except for basic offense and arrest information, the city may withhold case numbers 00-036700, 00-016625, 00-006815, and 00-037418 from disclosure based on section 552.108(a)(1). Also, social security numbers may be excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the federal Social Security Act and the city must withhold the account numbers we have marked under section 552.136 of the Government Code. Finally, the city must withhold the information that relates to Texas driver's license numbers, license plate numbers, and vehicle identification numbers pursuant to section 552.130 of the Government Code. As we are able to make these determinations, we need not address your remaining argument and all other information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/sdk

Ref: ID# 160517

Enc: Submitted documents

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(w/o enclosures)